

MEMORANDUM

SUBJECT: EPA Meeting with Indiana Industry Representatives on September 21, 2011

FROM: Ronna Beckmann
Office of the Regional Administrator

TO: File

This memorandum documents the September 21, 2011 meeting between EPA Region 5 and industry representatives from Indiana. The meeting was initiated by Skipp Kropp, Jackson Kelly PLLC, on behalf of Indiana industry. For EPA Region 5, I coordinated the meeting.

Twenty-seven individuals from Indiana companies and business groups attended, included representatives from Duke Energy, Alcoa, ArcelorMittal, ExxonMobil, U.S. Steel, American Electric Power, the Northwest Indiana Forum, and the Indiana Energy Association.

What follows is are notes from this morning's meeting. These are from handwritten notes and are designed to capture and paraphrase the discussion, and are not a verbatim record of the meeting.

Susan Hedman, EPA Region 5 Regional Administrator:

Welcome and apologies for the long security lines. Thank you for coming here. I'm attending primarily to hear from you. I was at the White House on the eve of the President's jobs announcement, which he followed up this past Monday with a deficit reduction plan. I've been asked as much as possible to meet with businesses, to find out their reactions to the President's proposals, to gather ideas for other proposals, and to request input on existing regulations. We want to work with business on regulations and to determine what's good for the economy and employment.

I want to thanks Skipp very much for contacting us as it's timely. I'm grateful we're doing this and want to stress that I want to hear from you. EPA's goal is to ensure that statutes protect human health and the environment, and want to do it in common sense ways that are efficient and effective.

Our priorities include eliminating backlogs for permitting and other requirements. Some Region 5 states are doing better than others. Indiana is the best in Region 5 with regard to eliminating backlogs. But, Indiana is not quite perfect. As we pub deadlines on businesses, our duty as regulators is to respond in a timely fashion. I do want to recognize Tom Easterly who's done a great job working with us on our joint priorities.

Skipp Kropp, Jackson Kelly PLLC:

Thank you, Susan. We've had meetings similar to this with Region 3 for 25 years. We hope we can all do this annually as I expect that the dialogue will be helpful.

Cheryl Newton, ARD:

I'd like to focus on a few things, regional priorities that are unique to Indiana, and not national rules. I'd like to give you a sense of attainment and nonattainment areas. The good news is that in coming days we'll take final actions on Indiana PM redesignations, including Evansville, Northwest Indiana, and Indianapolis. For NO₂, EPA has made it clear - - until there are more monitors, the whole country will be unclassifiable attainment. We're working with states on their monitoring networks. For ozone, the President requested that we withdraw the reconsideration. EPA is evaluating next steps with the 75 ppm standard. In 2013, we will do the regular reevaluation. Other than the Chicago area and Milwaukee, the rest of the region is in attainment for ozone. There's a lead nonattainment area in Muncie. And, there's still the CO standard in place.

Susan mentioned backlogs. As of Jan 1, 2011, Indiana only had 16 permits overdue in Title V. 7 of those have already been issued.

We're working with Indiana on CSAPR to help determine the options regarding a SIP replacing the FIP. The federal plan will be in place in 2012. There's no way for the states to explore a SIP earlier. 2013 is the earliest that a SIP could replace the FIP.

Regarding enforcement priorities, these are important: NSR compliance, coal fired power plants, cement, acid plants, glass manufacturing industry.

With regard to air toxics, we're focused on flares, making sure they are within parameters and using good, efficient combustion.

We're also looking at leaks and fugitive emissions.

Here in Region 5, we have a focus on the ethanol sector. Also, iron and steel. And we have a geographic focus on industrialized urban sectors.

Tinka Hyde, WD:

The water division works with the state on its delegated programs. Indiana has done a very good job with their permit backlog. At all facilities, they're at 99%. There are only 9 majors without permits. We're also looking to improve permit quality. We're working with the state on the remaining iron and steel permits.

One area of focus is 316A and thermal alternate limits. You need to keep them current in your permits. Indiana has 316A permits provisions approved, but there aren't limits in the permits.

Some demonstrations are decades old. When reviewing permits, need 316A limits. The states are requesting additional data. Please be prepared to submit it.

There's coal mining in southern Indiana. We're heard from citizen groups and enviros wanting us to focus on permitting and enforcement. We've been working with the Corps on 404 wetlands permits. For NPDES, look at reasonable potential – what you'd expect from coal discharges. The coal industry has a variety of entities involved – mining, surface mining, DNR, Corp, environmental groups, etc. In Indiana, there's a state-federal regulators workgroup with the coal industry representatives dealing with wetlands mitigation efforts. They're working on clarity and coordination. I can provide a contact if you're interested.

For municipalities, we've been looking at nutrient criteria. Indiana does not have a numeric stand. We've asked them to look at their discharges with nutrients and move to a numeric standard.

We've also been working on CSO settlements all over the state. Some have settled consent decrees. In those communities updates and maintaining infrastructure is expensive. Think about green infrastructure to solve storm water problems.

For regulatory development, Indiana has been working on antidegradation rules. We've been working closely with them. It's been back out for public comments 2-3 times. They've addressed federal comments and they changes comply with our standards. We hope it gets out shortly.

Margaret Guerriero, LCD:

LCD manages RCRA, TSCA, FIFRA, and TRI. I'm going to focus on RCRA, which is authorized to the state for permitting and corrective action. Although, there are some rules that aren't authorized for. With corrective action, we do a little more work. There's an agreement with them regarding working together. It's been a successful partnership, with a focus on corrective action and the 2020 baseline, milestone for construction being complete. There are several milestones in between with dates for those, too. We don't have a lot of issues getting work completed in Indiana – we've been successful. Indiana is great with permits - - 98% with permit renewals and issuance, which is remarkable.

As far as rules go, there's the coal combustion rule, proposed in June 2010. EPA got over 450,000 comments. The next step is the Notice of Data Availability, for the public to comment on the data that we received as part of the public comment period for the rule. There's no schedule now for the rule, only probably not this year.

With the definition of solid waste - - we finalized the rule in 2008. In 2010, we modified it to add proposed safeguards because of a settlement with the Sierra Club. The rule is out for comment now, and comment period extended until October 20.

There are RCRA enforcement initiatives, including decreased pollution through mining and illegal disposal of hazardous water. (listed several others)

We are also working on National repowering America's lands, siting renewable energy projects on contaminated properties like Brownfields. Wind, solar, and anaerobic digester projects.

We're going to work with IDEM on waste-minimization workshops, working with industry in Indiana to help facilities with waste minimization. Workshops are coming up.

Bernie Paul, B Paul Consulting, LLC:

I'm a consultant, doing mostly Clean Air Act Work. I have a questions about designations, what about SO₂? I know Indiana's recommendations, but would like an update. Regarding SO₂, SIP development, and the approval process, are there expectations regarding that process.

Cheryl Newton:

Indiana recommended nine individual counties with violating monitors in June 2011. EPA's final designations are due until June 2012. We'll do a series of technical assessments and start ferreting out the recommendations, looking at how closely the factors are followed, the boundaries, and elevating contentious areas. It's a year long so that we can explain the boundaries. We're still early in the process. As far as expectations, there's nothing different regarding the SIP process, but it's unique because it combines monitoring and modeling information. We're trying to provide guidance. We'll work with Region 5 states and LADCO to help. The SIP process is not different. But, it's a hybrid situation because you use modeling and monitoring for attainment.

Bernie Paul:

But, it's a one hour standards, with individual sources. This is the first time this has been done. Any thoughts on particular issues, averaging periods?

Cheryl Newton:

There are multiple SO₂ sources, and legitimate questions are being asked about how modeling with predict SO₂ sources. These are the kinds of conversations taking place. We're submitting questions to headquarters.

Bernie Paul:

When can we expect guidance?

Cheryl Newton:

It's a moving target. I'd heard end of the month.

Skipp Kropp:

What kind of factors were you looking at? Did you use the MIRA tool with nine factors?

Cheryl Newton:

I'm not familiar with that acronym, but it sounds like we're talking about the same factors: population growth, vehicle miles, whether there's a power plant in the county, etc.

Skipp Kropp:

Yes, that's what I meant.

Scott Darling, ALCOA:

We have non-EGU's covered by the NOx Sip Call. There was CAIR, and now CAIR is gone. Non-EGU's are struggling to understand what to do next year. There's no trading program to play in. This is a big problem for a "friend." Is Region 5 talking to IDEM about fixes?

Cheryl Newton:

This hasn't been brought to me, but it's the kind of conversation I'd expect to be having.

Bharat Mathur, Deputy Regional Administrator:

We will get back to you.

Daniel Arndt, Duke Energy:

I'm curious about the 316B Rule. How many comments? Is it still a July 2012 deadline for the final rule?

Tinka Hyde:

I don't know how many comments there were. We're moving through the rulemaking process.

Bernie Paul:

I have comments more than questions. Regarding air permitting, I spent days in this room from 2004 to 2006 working on a Title V task force. I'm happy to see a recent regulatory review report that identified the task force as a potential source of ideas to reduce bureaucracy. Please tell Headquarters that this group came up with over 100 recommendations, many good recommendations. They'd speed up the timeframes, reduce redundancy, etc. I encourage you to tell Headquarters.

Also, Indiana is working on changes to its minor NSR program. There is a working group process. I'm participating. But, it's hard to feel like we're accomplishing much because Region 5 is not part of the meeting. Region 5 is not there to explain concerns or hear approaches, making it a hollow process. It's frustrating. I encourage you to send folks to meetings as we notice the absence of the Agency.

Denny Wene, ALCOA:

On antidegradation, about the trigger point. Several states in Region 5 have new permits, but Indiana is without the hybrid process. In Indiana, new or increased discharges. The commissioner said Region 5 pushed back on him.

Tinka Hyde:

De minimus?

Denny Wene:

Trigger.

Tinka Hyde:

How is new increased discharge defined?

Kevin Doyle, ArcelorMittal:

I'd like to follow up on a comment Bernie made. Sometimes it's frustrating. IDEM has changed, though. They are easier to work with and the lines of communication are open. From a business standpoint, this is more cost-effective, an easier process. But sometimes it's frustrating with IDEM and EPA because we don't understand the dynamic. And, I'm not just focused on air.

Cheryl Newton:

With permitting, we review a certain number of draft permits. Certain criteria to determine which we look at. We look at a lot of permits that IDEM puts out for public comment. If a company or IDEM has a question about a permit, we're happy to discuss early on. A lot of permits we don't review. We have a range of our engagement on permitting. If something is unique, invite EPA in early, rather than EPA commenting as part of the public comment process.

Susan Hedman:

We want to work early with the states. It's terribly inefficient for us to wait to object, it doesn't make sense. We try to engage early, raise our issues, and prevent an inefficient process. If there are particular instances where you have questions, let us know.

Jennifer Thompson, Bingham McHale:

Rulemaking is frustrating, including the procedure of reviewing rules. What's the process in rulemaking. We don't want to spend years working on anything to not get anywhere.

Cheryl Newton:

There are a variety of ways we do rulemaking. I'm not familiar with the minor NSR working group, but have no problem with it. At the staff level, we work with folks at IDEM. They will call EPA for our reactions, our initial verbal feedback. If they don't need an official agency position, we'll get things to them without putting them in writing. My folks are looking across the country. We work with states with whatever means fit the situation. I tell my staff to give their gut option and we'll do a formal position in writing if that's what it takes.

Tinka Hyde:

It's the same for water. It could be verbal. When it gets to a point where we know we won't approve something, we will make sure everyone understands our position, and get it in writing. It helps to get beyond the issues.

Lisa Zemba, U.S. Steel:

In Minnesota, a lot of EPA oversight with 309. Could you give some background about this presence?

Tinka Hyde:

U.S. Steel's involvement there is in mining. There have been a lot of inquiries from enviros and citizens in Minnesota to look at these permits. We've found some questions about the 308's on a few of them. We have used that tool before. It's part of our oversight.

Skipp Kropp:

The coal combustion rule - - no schedule for the rule or NODA?

Margaret Guerriero:

The NODA will be soon, can get schedule for you. There's no date for the rule.

Bernie Paul:

How's the greenhouse gas permitting going? From your perspective.

Cheryl Newton:

The permits aren't in the triple digits in our region. But, I haven't asked for a count. We're looking at comment letters and trying to provide good, consistent guidance. In Region 5, there is no stalemate over comments or how to handle things.

Susan Hedman:

It's been uneventful.

Skipp Kropp:

As a structural issue, in Region 3, the staff was ok with a discussion about a disagreement appealing to senior management. If companies have an issue with staff, can they elevate it to senior management? Is that established procedure?

Susan Hedman:

It happens all the time. We have frequent contact, but it's rare that there is contact with the RA. The division directors try to see if they can resolve things.

Tinka Hyde:

We try to resolve things at a branch chief level.

Bharat Mathur:

States have primacy and delegated programs, so go to the state first. We can have three party discussions. Take your issues to IDEM and we'll participate as appropriate. At times, it may not be appropriate to talk to the company without the state present.

Tinka Hyde:

We can go to meetings to make sure issues are resolved.

Skipp Kropp:

This is very helpful. We don't like it when we have agreement with IDEM and then IDEM comes back and says that EPA doesn't agree.

Daniel Arndt:

About 316A - - Tell me about the state failure, problems?

Tinka Hyde:

316A determinations were sometimes made in the 70's, and kept getting rolled over. There are monitoring requirements, but not limits. As permits are reviewed, we ask that you submit up to date info to demonstrate a 316A demonstration. Data with new permit should be up to date - - not the 1970's study. This is an issue in many states.

Kay Nelson, Northwest Indiana Forum Director:

The Asian carp issue is of serious concerns with CAWS and throughout the state. We're closely following it and appreciate your work. Last week, Mathy Stanislaus talked about jobs. Brownfield redevelopment is important - - industries would like to play with you and create jobs.

My forum has a position paper on permitting certainty. There is concern regarding things that were put in and no one knows where they came from. We want to give industries an effective permitting timeline process.

Susan Hedman:

On Asian carp, EPA is not the lead. FWS/Corps are the leads. Nonetheless, we lead on GLRI which has set aside a large chunk of money for Asian carp projects. And, we'll continue to do so.

On Brownfields redevelopment. Renewable energy sites are a personal project. There are more Brownfield sites in R5 than other regions and most haven't been characterized. EPA can help to assess sites and work with firms. We a EPA are working hard to foster certainty and speed with regard to investments. We've been successful, working with businesses about appropriate remedies and got projects built. The Alcoa Alternative SF site. And, a solar facility in East St. Louis. It's very exciting. In eastern Michigan, Monroe, there is a landfill, and nasty industrial site. It will be redeveloped to become a wind tower manufacturing facility. Short timeframe, phenomenal facility. Tall turbines for east of the Mississippi. Brownfield sites tend to be located where there's existing infrastructure. It's useful to develop heating and cooling projects.

Green infrastructure – Brownfield sites can be used. Keep stormwater out of combined sewer systems. Even temporary green infrastructure in urban areas is helpful.

Sally Lambert, Alcoa:

Some progress in other regions? Brownfields?

Susan Hedman:

Repowering America is nationwide. In R5, we have so many opportunities, so maybe we've done more.

Skipp Kropp:

I will send any follow up questions to Ronna.

Bharat Mathur:

Any suggestions?

Susan Hedman:

We're sincere in asking that. Human health and the environment must be protected in ways that make sense. If it's costly, we want to know. We'll figure out a better way. This is important at a time when we need jobs.

Patrick Bennett:

I've been with the manufacturing association for ten years. This is the first time I've heard of this type of meeting. I look forward to future meetings. The dynamic between EPA, IDEM, and the regulated community is important. It would be great if down the road we could have a meeting with IDEM.

Susan Hedman:

I don't know why not. Easterly communicates with us. We can ask.

Skipp Kropp:

About suggestions, there is a frustration with EPA treating facilities in different regions differently. Please tell HQ that we're talking about the same things. On PCBs, we've gotten four different answers in four different regions. This has been going on for 30 years.

Margaret Guerriero:

PCB program was migrated two years ago. We're working with HQ and the region to get more in line with permitting and corrective action programs. It's a problem. We're working on it. Guidance will come out. Point well taken.

Susan Hedman:

Inconsistency is not something HQ wants to see or tolerates. We work hard for consistency, certainty for businesses, interregional equity.

Bernie Paul:

You've probably heard about the number of projects that companies had that they haven't been able to move forward. SO2 and NO2 new standards – the modeling is so rigorous that a lot of

new projects don't happen. This is unfortunate given the economy. I'm curious if you've heard about this.

Cheryl Newton:

We're aware of the concerns with the stringency of the 1-hour standard. There's been recent SO2 modeling guidance regarding emergency generation. EPA has a task force strike team mobilized and anyone can submit questions to get answers. A lot of companies that would have withdrawn are actually taking advantage of the system. I have not heard of a particular instance. A lot of resources have been made available.

Blake Jeffrey, INCMA:

Beneficial reuse measures. EPA is supportive. There's a mixed reaction in the states. We want to expand, but we've lost momentum. We recycle a lot. The challenge is regarding thermal reclamation units. Can we reuse the sands? Any leadership and support would be appreciated.

Susan Hedman:

This is the first of many meetings. We will follow up about the Easterly meeting. Maybe we'll come to Indiana.